



An  
Bord  
Pleanála

## Inspector's Report ABP-303721-19

<b>Development</b>	Construction of a house, new entrance and all associated site works
<b>Location</b>	Shanakiel Court, rear of Rosemount, Strawberry Hill, Sunday's Well, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	18/37901
<b>Applicant(s)</b>	Martin Maloney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	<ol style="list-style-type: none"><li>1. Sean &amp; Breda Murphy</li><li>2. Kevin and Marian Barry</li><li>3. Colm Barry</li><li>4. Francis O'Leary &amp; Others</li><li>5. Finnbar Murphy</li><li>6. Niall Murphy</li></ol>
<b>Observer(s)</b>	None

**Date of Site Inspection**

13<sup>th</sup> June 2019

**Inspector**

Fiona Fair.

## 1.0 Site Location and Description

- 1.1.1. The appeal site (0.12ha) is located within Rosemount to the west of Cork City Centre. Rosemount is accessed via Strawberry Hill. The appeal site is located on lands, previously a tennis court, to the rear of a large house (Rosemount House). The site is at a higher ground level to the main dwelling and accessed via pedestrian steps. The to the rear of the main dwelling.
- 1.1.2. It is proposed to access the appeal site via Shanakiel Court, a cul de sac serving approx. 7 large detached houses, which runs to the west and north of Rosemount House. The site is bounded to the south by Soho Terrace / Rope Walk, to the north and west by Shanakiel Court and to the east by residential properties on Strawberry Hill.
- 1.1.3. The road network / carriageway accessing this site, in particular Soho Terrace / Rope Walk and Shanakiel Court cul de sac is extremely narrow with narrow footpaths.

## 2.0 Proposed Development

- 2.1. The proposal comprises permission to construct:
  - A two storey dwelling house (206 sq. m)
  - Two car parking spaces

## 3.0 Planning Authority Decision

### 3.1. Decision

Subsequent to a request for further information with respect to (1) section drawings (2) landscaping scheme (3) justification for access arrangement proposed and compliance with DMURS (4) public sewer (5) storm water (6 & 7) sewer connection, planning permission was granted subject to 12 number conditions. Conditions of note include:

C3. Details of external finishes shall be agreed with the planning authority.

C4. Landscaping.

C5. (a) The vehicular entrance shall be no wider than 3 m

(b) Walls, pillars and vegetation within the envelope of visibility at the vehicular entrance shall be no higher than 1 m to allow for sight distances in accordance with DMURS

(c) Site boundary walls shall be plastered and capped on the public side

(d) Gates / doors shall be recessed and / or be incapable of opening outwards, steps and access ramps shall be recessed or contained within the curtilage of the proposed development, in order not to impede or obstruct the public road or footpath.

C6. External lighting

C7. A construction traffic management plan for the proposed development including haulage routes, a protocol to be followed by HGV drivers and allowable operational times for the HGV's on the city's road network shall be submitted for the written agreement of the p.a. prior to the commencement of development.

C8. Construction waste.

C9. Noise during construction

C10. Construction management

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planners Report sets out that the principle of a single residential dwelling on this site is acceptable subject to compliance with the objectives of the City Development Plan, including development management standards and subject to the proposed development not detracting from the character or residential amenities of the area.

#### **3.2.2. Other Technical Reports:**

Environment: No objection subject to condition

Drainage: No objection subject to condition

Road Design: No objection subject to condition

Transport & Mobility: No objection subject to condition

Conservation: No objection subject to condition

Irish Water (IW): No objection

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

18 number objections on file. Issues raised are similar in nature to those raised in the third part appeals and summarised in detail below.

## **4.0 Planning History**

### **4.1.1. On the Appeal Site**

None

## **5.0 Policy Context**

### **5.1.1. Development Plan**

The Cork City Development Plan 2015 – 2021 is the relevant statutory Plan.

The site is located on lands zoned Z04, Residential, Local Services and Institutional Uses, with the objective to:

‘To protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3.

The following sections of the Cork City Development Plan are of relevance:

Chapter 16 Standards for residential development

Section 16.58 Policy on single units including corner / garden sites

Section 16.73 Residential entrances / parking in front gardens.

Rosemount House is listed on the NIAH. It is not, however, a Protected Structure.

## 5.2. Natural Heritage Designations

The site is located approx. 4.8 Km west from the Special Protection Area (SPA) Cork Harbour (Site Code: 004030) and approx. 10Km west of Special Area of Conservation: Great Island Channel SAC (Site Code: 001058)

## 5.3. Environmental Impact Assessment (EIA)

- 5.3.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The issues raised, in the 6 third party appeals, are collectively summarised as follows:

- Proposed access through Shanakiel Court is unsuitable
- Traffic disruption
- A more suitable access should be provided through the existing site at Rosemount.
- The access arrangement proposed results in the loss of mature trees.
- The access proposed is completely substandard. The junction of Soho Terrace and Strawberry Hill is substandard.
- The width of Soho Terrace has been misrepresented and is in fact less than 3m in places. Mis-information on the file.
- Loss of car parking spaces within Shanakiel is inappropriate.
- Contemporary design is out of character with the surrounding area. Visual Intrusion.

- Proposal is excessive in terms of scale and height and would be visually intrusive.
- Serious loss of residential amenity to existing residents.
- Devaluation of property
- Structural damage to walls.
- Contravention of Zoning and Policy Objectives
- Conditions attached to the notification of decision to grant are unacceptable.
- Level of disruption to residents of Shanakiel during construction works is unacceptable. From traffic safety and noise in particular.
- Level of cut and fill required on this sloping site is of concern
- Residents purchased their houses with reasonable expectations of no further disruptions
- 25 to 30 years on the applicant is exercising ownership even though he has never done anything to maintain his so call ownership of Shanakiel.
- Dispute the claim that the applicant owns the Shanakiel estate road. Legal proceeding will be taken in this regard.
- No evidence of the applicant making contact with the planning authority in respect of taking in charge of the Shanakiel Estate, in accordance with agreements / covenant made at the time the houses were sold.
- Appeals Accompanied with:
  - Photographs

## 6.2. Planning Authority Response

Response received, no further comments to make.

## 6.3. First Party Response

6.3.1. A response was received it is summarised as follows:

- The grounds of objection relate to perceived traffic impacts of the proposed development during the construction phase.
- The impacts of the construction phase can be successfully mitigated by an effective Construction Management Plan. Which includes details of agreed dedicated haulage routes, a protocol to be followed by HGV drivers and allowable operational times for the HGVs on the city's road network.
- The proposed development constitutes an infill house in a zoned residential area within the built-up area.
- The applicant is the legal owner of the access road of Shanakiel Court and has legal entitlement to avail of the road to access the proposed development
- The traffic impact raised is exaggerated – proposal is for a single dwelling.
- The access as proposed, via Shanakiel Court, is designed to accommodate traffic rather than utilising an existing private access to a private dwelling house, where levels are difficult.
- The proposed entrance is in accordance with DMURS
- The proposal will not negatively impact upon car parking with Shanakiel Court. Each dwelling has in-curtilage car parking for 2 / 3 cars
- The is located within Zone 3 of the Cork City Councils Car Parking Zones Map. Table 16.8 recommends 2 car parking spaces per dwelling plus 0.25 spaces for visitor parking.
- The proposed dwelling can accommodate car parking within the site.
- A landscaping plan her been submitted which address loss of mature trees, incl. new boundary treatment and planting as well as details of trees to be removed.
- Letters attached from;
  - The applicant.
  - Foley Turnbull Solicitors setting out that the applicant Martin Moloney is the owner of the roadway to Shanakiel Court. He maintains the insurance and public lighting on same.



- E.mail from electric Ireland which confirms the account for the Meter Point Reference Number 10290157361 is paid for by Dr. Martin Moloney.
- MBC Insurance which confirms that they have held public liability insurance for Shanakiel Court as long as their records go back.

#### 6.4. Further Responses

6.4.1. Four responses, to the first party response, were received from Sean and Brenda Murphy, Finbarr Murphy, Niall Murphy and Colm Barry they are jointly summarised as follows:

- The applicant has applied for planning permission for a number of houses and apartments over the years
- He has never maintained the green in Shanakiel Court
- The residents of Shanakiel pay for the upkeep of the green
- Traffic safety and congestion is a legitimate concern
- The narrow width of roads and footpaths and steep incline makes the road network unsafe for construction traffic.
- There is a preferable alternative access available to the applicant
- The proposal would detract from the character of the area
- Legal ownership of the estate road is disputed
- Loss of mature trees
- Impacts during construction and loss of car parking spaces / turning area within Shanakiel Court

## 7.0 Assessment

The issues of the subject appeal case can be dealt with under the following headings:

- **Principle of the Development on the Site**
- **Impact Upon Residential Amenity**
- **Access**
- **Appropriate Assessment**

### 7.1. Principle of the Development on the Site

- 7.1.1. The proposed infill dwelling is acceptable in principle on this serviced urban infill site within Cork City, which is zoned Z04: 'Residential, Local Services and Institutions in the City Development Plan', with the objective: 'to protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlined in Chapter 3.
- 7.1.2. The planning authority are generally supportive of applications for infill residential, this is subject to proposals being satisfactory in terms of all other planning and development considerations. In the subject appeal case it is their opinion that the proposal would result in an appropriate level of development given the site size and existing permitted development in the immediate area. Rosemount house sits on a generous landscaped site, at a lower level, with well-defined boundaries and screening from adjoining development. I note, from my site visit that there are limited views from Shanakiel Court into the site and vice versa.
- 7.1.3. Densification within the city on appropriate sites, in proximity to public transport network is critical to support sustainable growth, this is strongly supported by recent Government policy. Regard is had to Urban Development and Building Height, Guidelines for Planning Authorities' (Dec 2018). It is pertinent to refer to section 2.14 of the Guidelines which state that 'in the interests of achieving national policy objectives for significantly increased urban housing delivery, there is a need for planning policy to ensure that an appropriate quantum of residential developments is included as part of significant development proposals for individual sites and urban

neighbourhoods'. I note also The National Planning Framework (NPF) and Regional Spatial and Economic Strategy (RSES) which support compact growth, densification and consolidation. Densification is appropriate on this site, subject to compliance with development management standards set out in the City Development Plan, subject to the proposed development not detracting from the character of the area or residential amenities and subject to provision of a safe access and car parking arrangement.

## **7.2. Impact Upon Residential Amenity**

- 7.2.1. Regard is had to concerns raised by the objectors in this regard.
- 7.2.2. It is considered that by virtue of the separation distances, boundary landscaping in place along with the differences in levels between the proposed dwelling and neighbouring properties, the proposed dwelling would not give rise to undue overlooking and would not adversely impact upon the residential amenities of the neighbouring properties at a higher level to the north and north west of the subject site.
- 7.2.3. It is acknowledged that the site comprises a generous rear garden within the existing built up area. The dwelling has been site specifically and architecturally designed to a high standard. Cognisance being had to the infill nature of the site and surrounding existing development it is considered that the dwelling would not have a negative impact upon existing residential amenity or visual amenity of the area, given its design, massing, scale, height and proposed finishes.
- 7.2.4. Overall, it is concluded that the proposed development would not diminish residential amenity so as to warrant a refusal of permission.

## **7.3. Access**

- 7.3.1. At present there is no vehicular access to the site from the north Shanakiel Court. The norther boundary comprises high mature leylandii trees. There is a change in ground level of some 1.5 m - 1.8m at the location of the proposed access from the appeal site to Shanakiel Court. There is a change in ground level of some 4.1m between the FFL of Rosemount house and the FFL of the proposed dwelling.

- 7.3.2. I have sympathy for the third-party appellants in this case. The roads serving the site, in particular, Soho Terrace / Rope Walk and Shanakiel Court cul de sac are seriously substandard by way of being narrow and steeply sloping. Footpaths widths are severely restricted. Cognisance is had that the proposed development constitutes one dwelling only. But I have serious concern with respect to construction traffic accessing the appeal site via Soho Terrace / Rope Walk and Shanakiel Court. Also, from my site visit, it is clear, that the proposed access to the appeal site from Shanakiel Court is currently used as a turning area and visitor car parking area serving Shanakiel Court. The proposed access arrangement would effectively eliminate this turning and parking area and would also impact upon existing amenity / open space area within Shanakiel Court estate.
- 7.3.3. Regard is had to the Transport and Mobility report, on file, dated 17/01/2019, which states 'no objection', subject to condition. It proposes that a specific condition be attached with respect to a construction traffic management plan being put in place, indicating dedicated haulage routes, a protocol to be followed by HGV drivers and allowable operational times for the HGV's on the city's road network. This is noted.
- 7.3.4. The access arrangement proposed is unsatisfactory and unacceptable. I am of the opinion that the proposed access arrangement would represent a potential traffic conflict between the existing users of Shanakiel Court and the proposed dwelling, it would give rise to traffic conflict and hazard and therefore should not be permitted. It would also have a negative impact upon the existing public open space area and mature boundary landscaping between the appeal site and houses in Shanakiel Court.
- 7.3.5. There is clear scope to access this site from within the Rosemount House grounds with less negative impact upon the residents to the north. I agree that the access arrangement proposed is unacceptable and that an alternative access via Rosemount should be proposed. I see no reason why the new dwelling could not be accessed via the existing private gated access to Rosemount, which exits onto Strawberry Hill a less circuitous access route.
- 7.3.6. I recommend a grant of planning permission subject to a revised site layout plan incorporating a revised access arrangement via Rosemount, off Strawberry Hill, precise details of which should be agreed in writing with the planning authority, prior

to the commencement of any development on this site. Should the Board agree then it must be considered whether such an amendment would constitute a significant deviation / material amendment from that proposed. If it is considered by the Board that such an amendment is too significant a deviation from that considered and granted by Cork City Council, and in the absence of appropriate public notices in respect of the revised proposal, it is advised that the Applicant be required to re-advertise the proposal as per Section 132(1) of the Planning and Development Acts 2000-2006.

## **8.0 Appropriate Assessment**

- 8.1.1. Having regard to the nature and scale of the proposed development and to nature of the receiving environment and to the lack of connectivity to a European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site

## **9.0 Recommendation**

- 9.1.1. I recommend that planning permission be Granted to the proposed development subject to conditions set out below.

## **10.0 Reasons and Considerations**

- 10.1.1. Having regard to the land-use zoning of the site, the existing pattern of development on the site and in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not give rise to a traffic hazard, be injurious to visual amenity of the area or injure residential amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 14<sup>th</sup> December 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The host dwelling and the new dwelling permitted by way of this grant of planning permission shall both be used solely as single residential dwelling units.

**Reason:** In the interest of residential amenity.

3. The proposed vehicular entrance via Shanakiel Court shall be omitted from the development. Prior to the commencement of any development, a revised site layout plan shall be submitted for the written agreement of the planning authority incorporating a new entrance, to serve the proposed dwelling, accessed via Rosemount and Strawberry Hill.

**Reason:** In the interest of traffic safety.

4. (a) All en-suite and wardrobe windows shall be permanently fitted and maintained with obscure or stained glass.

(b) Prior to the commencement of development full details (specifications) for the external finishes shall be submitted for the written agreement of the planning authority.

**Reason:** In the interests of proper planning and sustainable development of the area

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

6. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

7. That all necessary measures be taken by the contractor, including the provision of wheel wash facilities, to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

**Reason:** To protect the amenities of the area.

8. (a) The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

(b) Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

(c) A construction traffic management plan for the proposed development including haulage routes, a protocol to be followed by HGV drivers and allowable operational times for the HGV's on the city's road network shall be submitted for the written agreement of the planning authority prior to the commencement of development.

**Reason:** In the interests of public safety and residential amenity

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Fiona Fair

Planning Inspector

26.06.2019